

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**SHELL OIL COMPANY,
Plaintiff**

vs

**LIBERTY MUTUAL INSURANCE
COMPANY AND RSC EQUIPMENT
RENTAL, INC. d/b/a RENTAL
SERVICE CORPORATION,
Defendants**

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CIVIL ACTION NO. _____

**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. §§ 1332 and 1441(a) (DIVERSITY)**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Liberty Mutual Insurance Company (“Liberty”), hereby petitions this Court pursuant to 28 U.S.C. §§ 1332 and 1446 for removal, on the basis of diversity jurisdiction, to the United States District Court for the Southern District of Texas, Houston Division, of the action styled *Shell Oil Company v. Liberty Mutual Insurance Company and RSC Equipment Rental, Inc. d/b/a Rental Service Corporation*, Cause No. 2009-81500, currently pending in the 61st Judicial District, Harris County, Texas (the “State Court case”) and in support thereof would respectfully show this Court as follows:

**I.
FACTS**

1. Plaintiff Shell Oil Company (“Shell”) filed suit against Liberty and RSC Equipment Rental, Inc. d/b/a Rental Service Corporation (“RSC”) in the State Court case on December 23, 2008. Plaintiff seeks defense and indemnity from RSC and Liberty in connection

with several underlying lawsuits filed against it as a result of a bus accident that occurred on its premises in January 2007. See Plaintiff's Original Petition (the "Petition") at ¶ 8. Plaintiff alleges that the bus was subleased from RSC pursuant to a contract that required RSC to name Shell as an additional insured on its Business or Commercial Automobile Liability insurance. Petition at ¶¶ 10, 11. Plaintiff further alleges that it is, in fact, entitled to defense and indemnification pursuant to the Business or Commercial Automobile Liability insurance policy issued to RSC by Liberty ("the Policy.")

2. Shell seeks defense and indemnification in connection with the underlying lawsuits and asserts causes of action for Breach of Contract against Liberty and RSC for their alleged failure to provide such defense and indemnification. Petition at ¶¶ 20-26 and ¶¶ 42-49. In addition, Shell alleges that Liberty has breached its common law and statutory duties of good faith and fair dealing in connection with the denial of defense and indemnity. Petition at ¶¶ 36-40. In addition to seeking unspecified actual damages as a result of the claimed breaches, Shell seeks damages for Liberty's claimed delay in payment in violation of the Texas Insurance Code at the rate of 18% per annum and an additional amount not to exceed three times the amount of actual damages resulting from Liberty's violation of the Deceptive Trade Practices Act. Petition at ¶¶ 28, 29. Finally, Shell seeks to recover its attorneys' fees and costs incurred in prosecuting this action. Petition at ¶ 39.

3. Liberty first received notice of the filing of Plaintiff's Original Petition and Citation on January 11, 2010, when service was accomplished upon it. Upon information and belief, RSC was served with the Petition and Citation on January 12, 2010. Accordingly, this notice of removal is filed within the time required by 28 U.S.C. § 1446(b). RSC has consented to this removal as evidenced by the Consent attached hereto as Exhibit "A."

4. In accordance with standard Texas practice, Plaintiff's Original Petition fails to state the total amount of damages sought in this action. However, Shell's pleadings indicate that the damages sought from Liberty exceed the minimum amount in controversy. Shell seeks to recover its costs of defense in connection with the numerous underlying lawsuits against it. Shell alleges that it tendered the suits to Liberty for defense on January 3, 2008. Petition at ¶ 14. In light of the fact that Shell is seeking its defense costs incurred in a number of underlying personal injury lawsuits for at least a two year period and that Shell is also seeking late payment penalties of 18% per annum on those amounts as well as treble damages, Liberty believes Shell is seeking damages in excess of \$75,000.00, exclusive of interest and costs from Liberty.

5. Liberty filed its Original Answer on January 29, 2010.

6. A true and correct copy of all pleadings, process, and orders served in this action is attached hereto as Exhibit "B" and incorporated herein by reference.

7. Complete diversity exists between the Plaintiff and both Defendants now and so existed on the date of the filing of Plaintiff's Original Petition in the State Court case.

8. Liberty is an insurance company incorporated in the State of Massachusetts with its principal place of business in Boston, Massachusetts. As such, Liberty is a citizen of the State of Massachusetts and not the State of Texas. RSC is an Arizona corporation with its principal place of business in Scottsdale, Arizona. As such, RSC is a citizen of Arizona and not the state of Texas.

9. Plaintiff is a Delaware corporation with its principal place of business in Houston, Texas. As such, Shell is a citizen and resident of the State of Texas.

10. This action is a civil action which may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. §§ 1441(a) and 1332(a) in that it is between citizens of

different states; it is a civil action wherein the matter in controversy exceeds the sum of \$75,000.00, exclusive of interests and costs; neither the Plaintiff nor the Defendants are citizens of the same state; and all Defendants have consented to the removal.

11. Plaintiff requested a jury in the State Court case.

II.

PROCEDURAL REQUIREMENTS

12. Pursuant to 28 U.S.C. § 1446(d), written notice of filing of this Notice will be given to all adverse parties promptly after the filing of this Notice.

13. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of this Notice will be filed with the clerk of the 61st Judicial District Court of Harris County, Texas promptly after the filing of this Notice.

14. Attached hereto and incorporated herein, are the following items:

Exhibit A: RSC Equipment Rental, Inc. d/b/a Rental Service Corporation's Consent to Removal of Action.

Exhibit B: A true and correct copy of all pleadings, process served in this action (consisting of Plaintiff's Original Petition, Civil Process Request form filed by Plaintiff, Civil Case Information Sheet, Return of Citation indicating service on RSC, Return of Citation indicating service on Liberty, Defendant Liberty Mutual Insurance Company's Original Answer and RSC Equipment's Original Answer).

Exhibit C: A docket sheet for the State Court case.

Exhibit D: List of all counsel of record.

Exhibit E: Index of all documents filed with the Court.

WHEREFORE, PREMISES CONSIDERED, Defendant Liberty Mutual Insurance Company requests that this action be removed from the 61st Judicial District Court of Harris

County, Texas to the United States District Court for the Southern District of Texas, Houston Division, and that this Court enter such further orders as may be necessary and appropriate.

Respectfully submitted,

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BY: /s/ Catherine L. Hanna

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**ATTORNEYS FOR LIBERTY MUTUAL
INSURANCE COMPANY**

CERTIFICATE OF SERVICE

In accordance with the Federal Rules of Civil Procedures, I hereby certify that a true and correct copy of the foregoing document was served February 9, 2010 by facsimile as follows:

Via Facsimile 713.652.2029

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